

REMARKS

Applicants hereby amend claims 1 and 3. Claims 1-3, 5, and 6 are pending in this application.

Applicants respectfully traverse the rejection of claims 1-3, 5, and 6 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,539,310 to Shimomura ("Shimomura") in view of JP 11-123182 to Kawanishi ("Kawanishi"). Shimomura and Kawanishi do not render obvious the subject matter that is recited in claim 1.

The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. Such an analysis should be made explicit and cannot be premised upon mere conclusory statements. MPEP § 2142, 8th Ed., Rev. 6 (Sept. 2007). "A conclusion of obviousness requires that the reference(s) relied upon be enabling in that it put the public in possession of the claimed invention." MPEP § 2145.

Shimomura fails to teach or suggest at least "means for calculating at least one of values of bone weight, water weight, and muscular weight of the body, as well as means for judging a somatotype of the body . . . classified on the basis of *a correlation between the values as calculated and the body weight*," as recited in claim 1 (emphasis added).

Shimomura discloses "a body type determination apparatus 10 [that] comprises a bioelectric impedance meter 20 equipped with a weight scale and a control box 40." Shimomura at col. 3, lines 56-58. "[T]he bioelectric impedance meter 20 equipped with

the weight scale comprises: the constant current feeding electrodes 21a and 21b; ... the voltage measuring electrodes 22a and 22b; a voltage measuring circuit 24 functioning as an impedance measurement device for measuring a voltage between said voltage measuring electrodes 22a and 22b; [and] a body weight measuring unit 25 functioning as a body weight measurement device for measuring a body weight of a subject." Id. at col. 4, lines 9-19. "[T]he control box 40 comprises: a data input device 41." Id. at col. 4, lines 21-22. "[T]he apparatus displays a relationship between the BMI and the FMI and/or between the BMI and the LMI as a result of measurement by way of a graph and/or illustration." Id. at col. 3, lines 42-45.

The final Office Action asserts, "Shimomura is expressly concerned with and discloses a means for calculating (45) an approximate value of muscular weight as claimed." Final Office Action at page 5, numbered paragraph 12 (citation omitted). Independent claim 1 is amended to recite "means for calculating at least one of values of bone weight, water weight, and muscular weight of the body"

In Shimomura the LMI (Lean Mass Index) does not correspond to a "calculated value of muscular weight," as recited in claim 1. Rather, the LMI is equal to lean mass/body height². Shimomura at col. 3, line 40. The lean mass in this formula is equal to body weight - body fat mass. Id. at col. 5, line 59. But merely subtracting the body fat mass from the body weight does not provide the muscle weight. The human body contains many other components of significant weight, such as *bone*, *body fluids* including blood and water, *organs*, and *other tissues*, which are included in "lean mass" but do not contribute to "muscular weight."

Shimomura discloses, “although . . . the LMI has been indicated as an index of the lean tissue, the representation mode may be modified so that the LMI may be treated as an index of the muscular tissue [P]roviding an indication of *whether the muscle mass [is] more or less* rather than the indication of the lean tissue mass . . . can help the subject understand the indication more easily.” Id. at col. 8, lines 54-63 (emphasis added). However, an “index” of the muscular tissue in Shimomura does not constitute “a calculated value of muscular weight,” as recited in claim 1. An “index” is a number (as a ratio) derived from a series of observations and used as an indicator or measure. Merriam-Webster Online Dictionary. Shimomura teaches that the LMI is an “index” in the sense that a higher LMI indicates that “the muscle mass [is] more” and a lower LMI indicates that the muscle mass is “less.” But this mere *correlation* does not suggest that the LMI constitutes “a calculated value” of the muscular weight itself.

An index that correlates to a particular value, as is disclosed in Shimomura, is not a “calculation” of the value itself, as recited in claim 1. Rather, as explained in Shimomura, an index merely indicates by its rise or fall whether the correlated value roughly rises or falls, respectively. An increased LMI may roughly indicate that more muscle mass has accumulated, and a decreased LMI may roughly indicate a decrease in muscle mass, through a correlation between lean mass and muscle mass. But the LMI value itself is still not a “calculated value” of the muscle mass. The calculation recited in claim 1 calculates a value of the approximate muscular weight *itself*, while the LMI merely indicates by its *change upward* or *downward* whether there may also be an upward or downward change in muscle mass. Therefore, the determination of LMI by

Shimomura does *not* constitute a “calculation” of “at least one of *values* of bone weight, water weight, and muscular weight of the body,” as recited in claim 1 (emphasis added).

The Advisory Action dated February 20, 2009, cites a passage in Shimomura asserting that “the present invention allows the lean mass to be known and thus the muscle mass to be *grasped*.” Advisory Action at page 2, last paragraph (emphasis added). Shimomura distinguishes between “knowing” the lean mass and “grasping” the muscle mass. “Grasping” the muscle mass, as described in Shimomura, refers to nothing more than the rough correlation discussed above. As explained above, the LMI value itself serves as an index based on this correlation, rather than as the “calculated value” of the muscular weight that is recited in claim 1.

Further, Kawanishi does not overcome any of these deficiencies of Shimomura. The final Office Action cites Kawanishi for an alleged teaching of “a belt (9) including a plurality of pairs of electrodes” Id. at page 3, numbered paragraph 8. Without acceding to the final Office Action’s characterization of Kawanishi, Applicants submit that Kawanishi at very least fails to disclose or suggest any feature related to the “means for calculating” and “means for judging” that are recited in claim 1. Kawanishi therefore does not overcome the deficiencies of Shimomura.

Accordingly, claim 1 is allowable over Shimomura and Kawanishi, and this rejection should be withdrawn. Additionally, dependent claims 2, 3, 5, and 6 are also allowable over Shimomura and Kawanishi at least by virtue of their dependence from independent claim 1.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

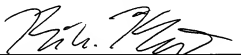
Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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